REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

UNION BANK OF THE PHILIPPINES, INC.,
Respondent.

CTA EB No. 1081
(CTA Case No. 7938)

Present:

DEL ROSARIO, *P.J.*,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, and
RINGPIS-LIBAN *JJ.*

Promulgated:

JUL 14 2014 9:20 a.m.

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DECISION

CASANOVA, J.:

This is a Petition for Review[1] filed by petitioner Commissioner of Internal Revenue, with the Court *En Banc*, seeking the reversal of the Decision dated August 5, 2013 (Assailed Decision)[2] and of the Resolution dated October 18, 2013 (Assailed Resolution)[3] of the Special Third Division of this Court in CTA Case No. 7938 entitled ***Union Bank of the Philippines vs. Commissioner of Internal Revenue*** ordering petitioner to refund or issue a tax credit certificate, in favor

[1] EB Rollo, pp. 7-21.
[2] Division Docket (Vol. II), pp. 000855-000877.
[3] *Ibid*, pp. 000919-000921.

of respondent Union Bank of the Philippines, Inc., in the reduced amount of Php90,923,044.40, representing the amount paid in connection with respondent's applications for the abatement of tax assessments in relation to its availment of the Tax Amnesty Program under Republic Act No. 9480.

The facts of the case as narrated in the Assailed Decision:

> "Petitioner, Union Bank of the Philippines, Inc., is a universal banking corporation duly organized and existing under and by virtue of Philippine laws with principal office address at Union Bank Plaza Building, Meralco Avenue, corner Onyx and Sapphire Roads, Ortigas Center, Pasig City.
>
> On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested under the laws with the authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of erroneously paid or illegally collected internal revenue taxes, and holds office at the 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City.
>
> On June 5, 2006, petitioner absorbed all the assets and liabilities of International Exchange Bank, pursuant to a merger duly approved by the Bangko Sentral ng Pilipinas and the Securities and Exchange Commission.
>
> On June 29, 2007, petitioner filed with respondent, twelve (12) applications for administrative abatement under Revenue Regulations ("RR") No. 15-06, as amended by RR No. 03-07, and accordingly paid the total amount of ₱147,727,650.61.
>
> On February 4, 2008, petitioner availed of the Tax Amnesty Program, pursuant to Republic Act No. 9480, with respect to the tax liabilities of International Exchange Bank.
>
> And on February 19, 2008, petitioner availed of the Tax Amnesty Program, with respect to its own tax liabilities.
>
> On March 4, 2009, petitioner then filed a claim for refund and/ or issuance of a tax credit certificate, representing the amount paid in connection with its applications for

abatement of tax assessments in the total amount of ₱147,727,650.61.

Due to respondent's inaction, on June 29, 2009, petitioner filed the present Petition for Review.

On July 20, 2009, respondent filed her Answer, interposing the following Special and Affirmative Defenses, to wit:

> 9. Petitioner claims to have filed twelve (12) applications for administrative abatement on June 29, 2007 and paid the total amount of ₱147,727,650.61 for the settlement of the following:

A. Union Bank Tax Assessments

Assessment Notice/ Case No.	Type of Tax	Taxable Year	Amount of Basic Tax Assessed	Amount Paid
DST-94-000007 (GR No. 169169)	DST	1994	₱ 18,305,720.81	₱ 7,322,28[8].32
DST-95-000008 (GR No. 169169)	DST	1995	4,651,832.01	1,860,732.80
DST-96-000004 (GR No. 169169)	DST	1996	27,604,906.67	11,041,962.43
DST2-97-000005(GR No. 169169)	DST	1997	44,681,456.79	17,872,582.72
DST2-99-000031(CTACaseNo.7017)	DST	1999	27,080,031.25	10,832,012.50
DST2-03-000071(CTACaseNo.7576)	DST	2003	65,258,112.86	26,103,2[45].14
VT-03-000224 (CTA Case No. 7674)	VAT	2003	95,349,213.09	9,534,921.31
DST -04-000078	DST	2004	9,283,094.17	928,309.42
TOTAL			**₱292,169,367.65**	**₱ 85,496,054.64**

B. International Exchange Bank Tax Assessments

Assessment Notice/ Case No.	Type of Tax	Taxable Year	Amount of Basic Tax Assessed	Amount Paid
(GR No. 171266)	DST	1996	₱ 14,768,246.70	₱ 14,768,246.70
(GR No. 171266)	DST	1997	42,036,359.51	42,036,359.51
ES-DST-2002-0468(CTACaseNo.7663)	DST	2002	29,605,831.12	2,960,583.11
ES-DST-2003-0469(CTACaseNo.7663)	DST	2003	24,664,066.54	2,466,406.65
TOTAL			**₱ 111,074,503.87**	**₱ 62,231,595.97**

> Petitioner also filed several cases in relation to the tax abatements in the Supreme Court and Court of Tax Appeals. Petitioner also claims to have filed an amnesty application for the above assessments. Now, petitioner files this new case covering same assessments. Apparently, petitioner vacillates between administrative and judicial

> remedies it has previously elected. This is in violation of Rule 7, Section 5 of the Rules of Court, which states:
>
> XXX XXX XXX
>
> 12. Assuming that this case was validly instituted, the incomplete payment of petitioner constitutes an installment payment of the total basic tax assessed. Revenue Regulations [No.] 3-2007 recognizes staggered payments and complete payment.
>
> 13. Furthermore, the claim of the petitioner that the abatement cases are subject to the tax amnesty law has been disproven in RMC [No.]69-07, Q-57 and A-57, which states:
>
> XXX XXX XXX
>
> 14. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*

On January 8, 2010, the Court issued a Resolution, resolving the Motion to Dismiss filed by respondent.

On January 26, 2010, the Court, pursuant to CTA Administrative Circular No. 01-2010, entitled "*Implementing the Fully Expanded Membership in the Court of Tax Appeals,*" dated January 5, 2010, transferred the case to the Third Division of the Court.

On September 23, 2010, the parties entered their Joint Stipulation of Admitted Facts and Issues.

Trial ensued. Petitioner presented documentary and testimonial evidence. On the other hand, respondent waived her right to present evidence.

On August 3, 2012, the case was submitted for decision, taking into consideration the Memorandum filed by respondent on May 31, 2012, and the Memorandum filed by petitioner on July 16, 2012.

Hence, this Decision.

ISSUES

As stipulated upon by the parties, the following issues for this Court's consideration are:

For petitioner:

WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND AND/OR ISSUANCE OF A TAX CREDIT CERTIFICATE FOR THE AMOUNT OF PESOS: ONE HUNDRED FORTY SEVEN MILLION SEVEN HUNDRED TWENTY SEVEN THOUSAND SIX HUNDRED FIFTY AND 61/100 (₱147,727,650.61), REPRESENTING THE AMOUNT WHICH WAS PAID TO RESPONDENT FOR THE SETTLEMENT OF ALLEGED DEFICIENCY TAX ASSESSMENT UNDER THE ABATEMENT PROGRAM, BY VIRTUE OF THE FACT THAT RESPONDENT DID NOT ACCEPT AND HAS NOT ACTED UPON THE SAID APPLICATIONS FOR ABATEMENT, AND THAT PETITIONER HAS VALIDLY AVAILED OF THE TAX AMNESTY PROGRAM ('TAP") UNDER RA NO. 9480.

For respondent:

WHETHER OR NOT PETITIONER CAN VALIDLY CLAIM A REFUND ON THE STAGERRED PAYMENTS OF ITS ABATEMENT; and

WHETHER OR NOT PETITIONER CAN AVAIL OF TAX AMNESTY WHEN IT HAS AVAILED FOR TAX ABATEMENT.

To summarize, the issue to be resolved by the Court is essentially on petitioner's entitlement to a refund or issuance of a tax credit certificate in the amount of ₱147,727,650.61."[4]

After the trial on the merits, the CTA Special Third Division promulgated a Decision on August 5, 2013, the dispositive portion of which reads as follows:

"**WHEREFORE**, the Petition for Review is hereby is **PARTLY GRANTED.** Accordingly, respondent is

[4] Decision, *Id.*, pp. 856-860.

> hereby **ORDERED to REFUND or ISSUE a TAX CREDIT CERTIFICATE**, in favor of petitioner, the reduced amount of ₱90,923,044.40, representing the amount paid in connection with the applications for abatement of tax assessments.
>
> **SO ORDERED.**"

On September 4, 2013, petitioner-CIR filed a Manifestation[5] stating that her Motion for Partial Reconsideration[6] was filed by registered mail on August 30, 2013, as evidenced by Registry Receipt No. 468; and praying that the attached copies of its Motion for Partial Reconsideration be noted and admitted on record.

In a Resolution[7] dated September 16, 2013, the CTA Special Third Division noted and made part of the record petitioner-CIR's Manifestation and ordered respondent-Union Bank to file its Comment on the Motion for Partial Reconsideration within ten (10) days from receipt.

Petitioner-CIR prayed in her Motion for Partial Reconsideration[8] that the Decision promulgated on August 5, 2013 be partially reconsidered and an order be issued: (1) sustaining the ruling with regard to G.R. No. 171266 entitled International Exchange Bank vs. Commissioner of Internal Revenue, with respect to the total amount of ₱56,804,606.21; (2) dismissing the instant Petition for Review for lack of jurisdiction or denied for lack of merit.

On October 9, 2013, petitioner-Union Bank (now respondent) filed its Comment to Respondent's (now petitioner) Motion for Partial Reconsideration (To the Decision dated August 5, 2013)[9].

In a Resolution[10] dated October 18, 2013, the CTA Special Third Division denied petitioner-CIR's Motion for Partial Reconsideration for lack of merit.

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[5] *Id.*, pp. 000878-000881.
[6] *Id.* pp. 000890-000897.
[7] *Id.*, pp. 000900-000901.
[8] *Id.*, pp. 000882-000889.
[9] *Id.*, pp. 909-917.
[10] *Id.*, pp. 919-921.

On November 22, 2013, petitioner-CIR filed the instant Petition for Review with the CTA *En Banc*, praying for the reversal of the Honorable Court's Decision granting in part the Petition for Review of respondent-Union Bank and ordering petitioner-CIR to refund or issue a tax credit certificate in favor of respondent-Union Bank in the amount of ₱90,923,044.40; and that the Resolution denying petitioner's Motion for Partial Reconsideration, be set aside and another one be entered denying the respondent's claim for refund in its entirety.

On December 23, 2013, CTA *En Banc* promulgated a Resolution[11] ordering respondent-Union Bank to file its comment on petitioner-CIR's Petition for Review.

On February 3, 2014, respondent-Union Bank filed its Comment to Petitioner's Petition for Review[12] .

On February 14, 2014, the Court promulgated a Resolution[13] submitting the case for decision.

The petitioner-CIR, in the instant Petition for Review, raised this sole issue[14]:

> "THE HONORABLE SPECIAL THIRD DIVISION ERRED IN PARTLY GRANTING RESPONDENT'S PETITION FOR REVIEW, THEREBY ORDERING PETITIONER TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE IN FAVOR OF RESPONDENT TO THE REDUCED AMOUNT OF ₱90,923,044.40."

Petitioner-CIR argues that respondent is not entitled to a refund or tax credit for the reduced amount of P90,923,044.40 allegedly representing the amount that it paid for the settlement of deficiency tax assessment under the abatement program on the basis that tax amnesty is not applicable to the case at hand. Petitioner-CIR posits that tax amnesty shall not be applicable pursuant to Section 8(f) of RA 9480 as the assessments involving the periods 1994, 1995, 1996 a

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[11] En Banc Rollo, pp. 52-53
[12] *Ibid.*, pp. 54-61.
[13] *Id.*, pp. 64-65.
[14] Assigned Error, Petition for Review, *Id.*, p. 12

and 1997 had already been decided and had become final and executory, thus claims corresponding to tax abatements of Union Bank for these periods can no longer be refunded. Petitioner-CIR submits that respondent cannot validly claim a refund of its abatement payments as these already form part of the advance or staggered payments on its abatements/assessments pursuant to Revenue Regulations No. 3-2007. Petitioner-CIR further submits that upon payment of the application for abatement, respondent is already barred from availing of the Tax Amnesty Program under RA 9480 on the basis of Revenue Memorandum Circular No. 69-07. Lastly, petitioner-CIR asseverates that respondent's claim for tax refund, just like a claim for tax exemption, is construed strictly against the claimant and must be justified by the clearest grant of law.

In its Comment, respondent-Union Bank points out that the arguments raised by petitioner in the instant petition is a rehash of her submissions in her Memorandum dated May 31, 2012 and Motion for Partial Reconsideration dated August 30, 2013, both of which have been ruled upon by this Honorable Court in the Assailed Decision and Assailed Resolution. Moreover, respondent-Union Bank submits that of the twelve applications for abatement of its assessments, four applications were denied and eight applications were not acted upon by petitioner. Respondent-Union Bank, likewise, emphasizes that no termination letter and no Authority to Cancel Assessment were issued to it by petitioner with respect to the eight applications, hence, there was no approval of the said abatement applications. With the aforementioned non-approval of the said applications, it is respondent-Union Bank's position that there is no basis for petitioner to hold on to the amount paid by respondent for the abatement of the assessments, giving rise to the application of the doctrine of *solutio indebiti*, which calls for the duty of the government to restore to respondent the sums representing erroneous payments of taxes.

Respondent-Union Bank further submits that, since there was no acceptance of its abatement applications by petitioner, it cannot be said that it has already lost its right to avail of the Tax Amnesty Program under RA 9480. Anent its payment of P147,727,650.61, respondent counters that this cannot be considered as part of the advance or staggered payment under the Tax Amnesty Program on the ground that there is no evidence to prove that respondent has requested to pay in staggered basis and that petitioner has approved the same contrary to the requirements set forth under Section 6 of RR No. 15-06, as amended by RR 03-07.

Respondent-Union Bank, likewise, posits that the tax assessments during the taxable years 1994, 1995, 1996 and 1997, the subject matter of the case docketed as G.R. No. 169169, are still pending with the Supreme Court and is not yet final and executory, hence can still be the subject of respondent's application for Tax Amnesty Program under RA 9480. Lastly, respondent-Union Bank expresses its concurrence to the ruling of this Honorable Court in its Resolution dated October 18, 2013 which pointed out that abatement cases are not included in the exceptions provided for in RA 9480.

After a careful and thorough evaluation and consideration of the records of the case, including both parties' arguments in their respective pleadings, this Court finds no merit in the instant petition.

The crux of the controversy in the instant petition is the propriety of the CTA Special Third Division's ruling partially granting respondent-Union Bank's claim for refund in relation to its abatement payments in light of its application for Tax Amnesty Program under RA 9480.

We affirm the CTA Special Third Division's ruling partially granting respondent Union-Bank's claim for refund in the reduced amount of P90,923,044.40 representing the amount it paid in connection with its applications for abatement of tax assessments.

Contrary to the position taken by petitioner-CIR, the CTA Special Third Division did not err in partially granting respondent-Union Bank's claim for the refund or issuance of tax credit certificate. Respondent-Union Bank was able to prove its entitlement to the claim for refund, albeit in a reduced amount, the subject amount representing its payments for the application for abatement of tax assessments it submitted before petitioner-CIR.

We, likewise, do not agree with the argument of petitioner-CIR that respondent-Union Bank cannot validly avail of the Tax Amnesty Program pursuant to RMC No. 69-07 which provides that tax cases covered by compromise agreement or abatement program of the BIR can no longer avail of the tax amnesty in so far as the tax subject of the compromise/abatement is concerned. As extensively discussed in the Assailed Decision, the respondent-Union Bank of the Philippines, Inc. cannot be said to be covered by the abatement program as its application for abatement is not yet final on the basis of the provisions of Revenue Memorandum Order No. 23-2006 which prescribes the guidelines and procedures in the availment of the abatement program. There was no approval on the part of petitioner-CIR of the said application for abatement. Likewise, no Termination Letter and Authority to Cancel Assessment (ATCA) were issued.

Moreover, it is worthy to emphasize that abatement cases are not included in the exceptions for the availment of the Tax Amnesty Program under Section 8 of RA 9480 and Section 5 of DOF Order No. 29-07, as published by Revenue Memorandum Circular No. 55-07. Hence, under the maxim *expressio unius est exclusio alterius,* the fact that abatement cases were not included in the list of exceptions implies that it is excluded and, therefore, eligible for the tax amnesty program under RA 9480.

Note however that with regard to the claim for refund, in the total amount of P56,804,606.21, which is the subject of G.R. No. 171266, the same shall not be eligible for tax amnesty under RA 9480 as the aforementioned Supreme Court case had already become final and executory on October 2, 2007.

Anent petitioner-CIR's argument that the payments made by respondent-Union Bank cannot be refunded as it already formed part of the staggered payments on the abatement program, we, likewise, find the same unmeritorious. Section 6 of RR No. 15-06, as amended by RR 03-07, explicitly provides that a taxpayer may be allowed to pay the basic tax on a staggered or installment basis, but the same shall be subject to the approval of petitioner-CIR. As there is nothing in the records to show that respondent had requested to pay in a staggered basis and that petitioner-CIR had approved the same, this Court affirms the ruling in the Assailed Decision that respondent-Union Bank's payments simply cannot be considered as staggered payments for the abatement program.

Finally, We reiterate the CTA Special Third Division's ruling that, considering that respondent-Union Bank's application for abatement did not attain finality, it is eligible to avail of the tax amnesty program under RA 9480, and, that the payments of respondent-Union Bank cannot be considered as staggered payments. We find no cogent reason to reverse these findings. Consequently, this Court finds that the payments made in connection with respondent-Union Bank's offer for abatement should consequently be returned based on the principle of *solutio indebiti* under Article 2154[15] of the Civil Code of the Philippines.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The Assailed Decision dated August 5, 2013 and Assailed Resolution dated October 18, 2013 are both **AFFIRMED** ***in toto.***

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

[15] Art. 2154. If something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises.

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice